

**CHAPTER 160****(HB 550)**

AN ACT relating to the Department of Juvenile Justice and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 15A.065 is amended to read as follows:

- (1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:
  - (a) Prevention of juvenile crime;
  - (b) Identification of juveniles at risk of becoming status or public offenders and development of early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;
  - (c) Providing educational information to law enforcement, prosecution, victims, defense attorneys, the courts, the educational community, and the public concerning juvenile crime, its prevention, detection, trial, punishment, and rehabilitation;
  - (d) The operation of or contracting for the operation of postadjudication treatment facilities and services for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;
  - (e) The operation or contracting for the operation, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;
  - (f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;
  - (g) Conducting research and comparative experiments to find the most effective means of:
    1. Preventing delinquent behavior;
    2. Identifying predelinquent youth;
    3. Preventing predelinquent youth from becoming delinquent;
    4. Assessing the needs of predelinquent and delinquent youth;
    5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
    6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and
  - (h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.
- (2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.
- (3) The Department of Juvenile Justice may contract for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar

service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:

- (a) Bidding process; and
  - (b) Emergency acquisition process.
- (4) The Department of Juvenile Justice shall develop programs to:
- (a) Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;
  - (b) Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and
  - (c) Provide mental health services to committed youth according to their needs.
- (5) (a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, as amended, and which shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for Families and Children, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.
- (b) The advisory board shall be chaired by a private citizen member appointed by the Governor and shall serve a term of two (2) years and thereafter be elected by the board. The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms. The membership of the advisory board shall consist of no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been re-appointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include the following:
1. Three (3) current or former participants in the juvenile justice system;

2. An employee of the Department of Juvenile Justice;
  3. An employee of the Cabinet for Families and Children;
  4. A person operating alternative detention programs;
  5. An employee of the Department of Education;
  6. An employee of the Department of Public Advocacy;
  7. An employee of the Administrative Office of the Courts;
  8. A representative from a private nonprofit organization with an interest in youth services;
  9. A representative from a local juvenile delinquency prevention council;
  10. A member of the Circuit Judges Association;
  11. A member of the District Judges Association;
  12. A member of the County Attorneys Association;
  13. A member of the County Judge/Executives Association;
  14. A person from the business community not associated with any other group listed in this paragraph;
  15. A parent not associated with any other group listed in this paragraph;
  16. A youth advocate not associated with any other group listed in this paragraph;
  17. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
  18. A local school district special education administrator not associated with any other group listed in this paragraph;
  19. A peace officer not associated with any other group listed in this paragraph; and
  20. A college or university professor specializing in law, criminology, corrections, psychology, or similar discipline with an interest in juvenile corrections programs.
- (c) Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.
- (6) The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:
- (a) Facility access;
  - (b) Scheduling; and
  - (c) Access to residents' records.

- (7) *The Department of Juvenile Justice may, if space is available and conditioned upon the department's ability to regain that space as needed, contract with another state or federal agency to provide services to youth of that agency.*

Section 2. KRS 610.220 is amended to read as follows:

- (1) Except as otherwise provided by statute, if an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, youth alternative center, a nonsecure facility, or, as necessary, in a hospital or clinic for the following purposes:
  - (a) Identification and booking;
  - (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
  - (c) Photographing;
  - (d) Fingerprinting;
  - (e) Physical examinations, including examinations for evidence;
  - (f) Evidence collection, including scientific tests;
  - (g) Records checks;
  - (h) Determining whether the child is subject to trial as an adult; and
  - (i) Other inquiries of a preliminary nature.
- (2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.
- (3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, ***and shall not be handcuffed to or otherwise securely attached to any stationary object.***

Section 3. KRS 610.265 is amended to read as follows:

- (1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays pending a detention hearing.
- (2) (a) Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall

consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

- (b) If the court orders a child detained further after the detention hearing, that detention shall be served as follows:
1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
  2. If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.
  3. If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph.
  4. Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:
    - a. Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;
    - b. Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and
    - c. Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.
  5. If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide

detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.

6. If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.
- (c) ***If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in Section 4 of this Act.***
- (d) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

Section 4. KRS 610.290 is amended to read as follows:

- (1) Unless a hearing is held within the time frame established by KRS 610.265, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case.
- (2) ~~The~~<sup>[A]</sup> child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.
- ~~(3)~~<sup>(2)</sup> Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

Section 5. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing, may:

- (1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or
- (2) Place the child ~~on probation, home incarceration, or~~ under ***parental*** supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine, ***or place the child on probation under conditions that the court shall***

*determine. At the time the child is placed on probation the court shall explain to the child the sanctions which may be imposed if the court's conditions are violated, and shall include notice of those sanctions as part of its written order of probation.* A child placed on probation~~[, home incarceration, or supervision]~~ shall be subject to the visitation and supervision of a probation officer or an employee of the Department of Juvenile Justice ~~and, unless the court's order contains a specific sanction to be imposed in the event that a violation of probation occurs, a violation of probation may result in commitment]~~. Except as provided in KRS 635.083, a child placed on probation~~[, home incarceration,]~~ or *parental* supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation~~[, home incarceration, or supervision]~~ after the person reaches the age of seventeen (17) years and six (6) months, the probation~~[, home incarceration, or supervision]~~ shall be for a period not to exceed one (1) year; or

- (3) Commit or recommit the child to the custody~~[ or guardianship]~~ of the Department of Juvenile Justice, *or grant guardianship to* a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed or recommitted to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement as soon as possible but not to exceed thirty-five (35) days of the time of commitment or recommitment. The Department of Juvenile Justice shall pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to KRS 635.070 and to the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or
- (4) If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed forty-five (45) days; or
- (5) If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed ninety (90) days; or
- (6) Any combination of the dispositions listed above *except that, if a court probates or suspends a commitment in conjunction with any other dispositional alternative, that fact shall be explained to the juvenile and contained in a written order.*

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsection (4) or (5) of this section in accordance with the statewide detention plan and administrative regulations implementing the plan.

Section 6. KRS 635.100 is amended to read as follows:

- (1) Any child committed to or in the custody of the Department of Juvenile Justice who escapes or is absent without leave from his or her placement shall be taken into custody and returned to the custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (2) Any child committed to the Department of Juvenile Justice who is placed on supervised placement by the Department of Juvenile Justice and who violates the terms or conditions of supervised placement may be returned to active custody of the Department of Juvenile Justice and ~~shall~~~~may~~ be taken into custody by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (3) A child taken into custody may be held in a Department of Juvenile Justice facility, program, or contract facility, prior to the administrative hearing, provided a preliminary hearing is held by a person designated by the Department of Juvenile Justice within five (5) days, exclusive of weekends and holidays, of the holding, unless the child or his representative request or agree to a longer period of time, to determine if there is probable cause to believe that the child violated his supervised placement conditions and, if so, to determine if the best interest of the child requires that the child be held in custody pending an administrative hearing pursuant to subsection (5) of this section. The child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and to be represented by counsel at the preliminary hearing.
- (4) A child taken into custody as provided in subsection (1) of this section shall be returned to the active custody of the Department of Juvenile Justice within three (3) days, exclusive of weekends and holidays, and no administrative hearing shall be required.
- (5) If the child is returned to the active custody of the Department of Juvenile Justice as provided in subsection (3) of this section an administrative hearing shall be held within ten (10) days, exclusive of weekends and holidays, of the preliminary hearing unless the child and his representative request or agree to a longer period of time. The hearing shall be held by one (1) hearing officer designated by the Department of Juvenile Justice to hear such matters at which time the child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and be represented by counsel.
- (6) The department shall have the power to administer oaths and to issue subpoenas compelling the attendance of witnesses as it may deem necessary to the case of any child before it. Disobedience of a subpoena may be punished as contempt of court, after a hearing before the committing juvenile court.
- (7) Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.
- (8) The Department of Juvenile Justice shall promulgate administrative regulations to govern at least the following aspects of this section:
  - (a) Commissioner's warrant;
  - (b) Procedural aspects of the hearing;



- (c) Burden of proof;
- (d) Standard of proof; and
- (e) Administrative appeal process.

Section 7. KRS 635.510 is amended to read as follows:

- (1) A child, thirteen (13) years of age or older *at the time of the commission of the offense*, shall be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(a), (b), (c), (d), (e), or (f).
- (2)
  - (a) A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2).
  - (b) Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(g).
- (3) Upon final adjudication by the juvenile court under subsection (2) of this section, the juvenile court judge shall order a juvenile sexual offender assessment to be conducted on the child by the program or by a qualified professional approved by the program which shall recommend *whether the child be declared a sexual offender and receive sexual offender*~~the appropriate course of~~ treatment. Upon receipt of the findings of the assessment, the juvenile court judge shall determine whether the child shall be declared a juvenile sexual offender, and, if so, shall initiate a referral to the program for treatment.

Section 8. KRS 640.030 is amended to read as follows:

A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

- (1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;
- (2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:
  - (a) Whether the youthful offender shall be placed on probation or conditional discharge;
  - (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed *the youthful offender's attainment of the age of eighteen (18) years and five (5) months*~~a period in excess of six (6) months~~. At the conclusion of the treatment program~~or at the expiration of six (6) months, whichever first occurs~~, the individual

shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or

- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;
- (3) If a youthful offender has attained the age of eighteen (18) *years but less than eighteen (18) years and five (5) months* prior to sentencing, that individual shall be returned to the sentencing court *upon attaining the age of eighteen (18) years and five (5) months* ~~at the end of a six (6) month period~~ if that individual has been sentenced to a period of placement or treatment with the Department of Juvenile Justice. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section; and
- (4) *The Department of Juvenile Justice shall inform the sentencing court of any youthful offender in their custody pursuant to this section who has attained the age of eighteen (18) years and five (5) months, and the court shall enter a court order directing the sheriff or jailer to transport the youthful offender to the county jail to await sentencing pursuant to subsection (2)(a) or (c) of this section; and*
- (5) KRS 197.420 to the contrary notwithstanding, a youthful offender who is a sexual offender as defined by KRS 197.410(1) shall be provided a sexual offender treatment program by the Department of Juvenile Justice pursuant to KRS 635.500 and as mandated by KRS 439.340(11) unless the youthful offender has been transferred to the Department of Corrections.

Section 9. KRS 17.495 is amended to read as follows:

No registrant, as defined in KRS 17.500, who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility. The measurement shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence. *This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in a secondary education program.*

Section 10. KRS 17.552 is amended to read as follows:

No person shall conduct comprehensive sex offender presentence evaluations or treatment without first obtaining approval from the Sex Offender Risk Assessment Advisory Board, except that the Department of Corrections sex offender treatment program shall be regulated under KRS 197.400 to 197.440 and excluded from the application of this statute *and the Department of Juvenile Justice sex offender treatment program shall be regulated under KRS 635.500 and 635.520 and excluded from the application of this statute.*

Section 11. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.
- (2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental

condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence *or prior to final sentencing for youthful offenders*, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.550, ~~or~~ the Department of Corrections, *or the Department of Juvenile Justice if the defendant is a youthful offender*. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 12. Whereas the Commonwealth must revise its current laws in order to comply with federal funding requirements, an emergency is declared to exist with regards to Sections 2, 3, 4, and 8 of this Act, and those sections shall take effect upon passage and approval by the Governor or upon their otherwise becoming law.

**Approved April 22, 2004**